

Appl. No. 09/920,080
Amdt. dated June 23, 2003
Amendment under 37 CFR 1.116 Expedited
Procedure Examining Group

PATENT

REMARKS/ARGUMENTS

Review and reconsideration of the application are respectfully requested in view of the foregoing amendments and the following remarks.

Drawing Objections

Applicant respectfully traverses the Examiner's objection to the drawings. The Examiner states that each of Figs. 3a-c show some kind of structure between the pole and the spar, therefore fail to show the spar "directly" connected to the pole, as recited in claims 5 and 18. Respectfully, that is not correct. Fig. 3a shows the spar directly connected to the pole. The direct connection shown in Fig. 3a is described in the specification at (amended) par. 21, lines 2-4, where it states: "In Figure 3a, the spar is directly connected to the main pole. This connection is suitably made by riveting, tying, hooking or otherwise flexibly connecting the spar to the main pole." That is what is shown in cross section in Fig. 3a. Therefore, applicant believes Fig. 3a does show the "direct connection" recited in claims 5 and 18 and submits the drawing objection should be withdrawn.

Applicant also submits herewith a replacement sheet embodying the revisions to Fig. 3 approved by the Examiner.

Specification Objections

Applicant has amended the specification in two locations to correct typographical errors. In paragraph 19, applicant has changed "spares" to "spars." In paragraph 21, applicant has changed "spa" to "spar," as required by the Examiner.

Claim Objections

The Examiner objected to claim 16 on the basis that in line 7, "end" should be "ends." Applicant has amended claim 16 as required by the Examiner.

Claim Rejections

The Examiner rejected claims 1-5, 7-12, 15, 29, 30, 16-18, 20-24, 25, and 26 under 35 U.S.C. §112 as being indefinite because the limitation "at a point intermediate said first and second ends" in line 6 of claim 1, lines 6-7 of claim 16, and line 5 of claim 25 are unclear as to which ends are being referenced, the ends of the pole or the ends of a spar. Applicant has

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amended each of independent claims 1, 16, and 25 to clarify that the "point intermediate said first and second ends" refers to the "first and second ends of said spar." With these amendments, applicant respectfully submits the § 112 indefiniteness rejection is overcome with respect to independent claims 1, 16, and 25, and dependent claims 2-5, 7-12, 29, 30, 17-18, 20-24, and 26.

The Examiner rejected claims 1, 2, 4, 5, 7-12, 15 and 25 as anticipated under 35 U.S.C. § 102(b) by Eastaugh '945. Eastaugh '945 discloses a wind-direction indicator, not a frame for a flexible shelter structure or a flexible shelter structure including such a frame, as recited in the claims. Indeed, the wind direction indicator of Eastaugh '945 is designed to allow wind to blow through it to signal wind direction and intensity to skydivers. It is not designed to and is not suitable to be used for a shelter structure as defined in the specification (see p. 4, par. 22) and recited in the claims. Indeed, it provides no "shelter" at all. For at least that reason, persons skilled in the art of designing shelters and seeking to solve the shelter problems addressed by the claimed invention would not look to Eastaugh '945 for guidance. Eastaugh is non-analogous art and the rejection should be withdrawn for that reason alone.

Additionally, applicant has amended independent claims 1, 16, and 25 to clarify that the ends of the elongated flexible pole do not terminate in some arbitrarily-chosen theoretical "common plane," as apparently envisioned by the Examiner with respect to Eastaugh '945. Rather, as described in the specification at page 3, paragraph 18, and as now clarified in the claims, the ends of the elongated flexible pole terminate substantially at ground (for example the ground itself or some base thereon). This enables the pole, in conjunction with the recited spars to form a frame for a "shelter" structure, in contrast to a kite, sail, or wind-direction indicator. Dependent claims 8, 9, 21, 22, 29, and 30 have been similarly amended to replace the recited "common plane" in order to remain consistent with the independent claims from which they depend.

Eastaugh '945's wind-direction indicator has at least one end of an elongated pole free to blow in the wind, as it must, to function as a wind-direction indicator. Both ends of the pole do not terminate substantially at ground and Eastaugh '945 therefore does not anticipate any of amended independent claims 1, 16, or 25, or their respective dependent claims.

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Additionally, with respect to dependent claim 2, Eastaugh '945 does not describe a "flexible shelter structure," and certainly not one where a "membrane" defines a "substantially sheltered space," as recited in the claim and defined in the specification.

With respect to dependent claim 8, applicant has amended the claim to indicate that at least one of the ends of a spar terminates substantially at ground. This is according to the embodiment described in the specification wherein the structure is used as a "lean-to." See pgs. 5-6, par. 27. In contrast, both ends of Eastaugh '945's cross-rod remain free to blow in the wind, as they must in order to function as a wind-direction indicator. Neither end terminates substantially at ground.

With respect to dependent claim 12, Eastaugh '945's wind-direction indicator does not have a membrane connected to a flexible frame structure over the pole and spars, so as to define a sheltered space. Rather, Eastaugh '945 describes "flags" that hang from a pole and a cross-rod and fly freely in the wind to indicate wind-direction and intensity.

The Examiner also rejected claims 1-5, 7-10, 12, 15, 30, 16-18, and 20-24 as anticipated under 35 U.S.C. §102(b) by Leibel '410. Applicant first wishes to apologize to the Examiner for the confusion concerning the Leibel '410 reference and appreciates the Examiner identifying the Leibel reference in a brief telephone conversation with applicant's attorney on June 17 or 18, 2003. It appears that while applicant attempted to disclose the Leibel '410 patent in an IDS mailed August 22, 2001, the IDS had two typographical mistakes, first identifying the reference as Patent No. 3,843,410, when it is in fact 3,834,410, and secondly naming "Gillis" as the inventor rather than Leibel. Applicant appreciates that the Examiner was able to locate the reference despite these errors, and apologizes for any inconvenience or confusion the errors caused.

As explained previously, applicant has amended independent claims 1, 16, and 25, and dependent claims 8, 9, 21, 22, 29, and 30 to remove the reference to "common plane" and to clarify the ends of the elongated flexible pole terminate "substantially at ground." In contrast, the ridge pole 37 of the frame disclosed in Leibel '410 terminates in the air substantially above ground, rather than substantially at ground. Further, each of the ends of each of the corner

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posts 11, 13, 15, and 17 terminate at ground (Figs. 1, 5, 6, and are not "free" as recited in the claims. As described in the specification, it is maintaining the ends of the spars free that enables the frame to provide additional volume to the sheltered space. See p. 3, par. 19. Clearly, the frame of Leibel '410 does not provide this characteristic advantage of the invention. Thus, Leibel '410 does not anticipate any of claims 1-5, 7-10, 12, 15, 30, 16-18, and 20-24 as presently constituted.

Additionally, with respect to dependent claim 3, it is clear the tent material of Leibel '410 does not tension the ridge pole or corner posts as recited. Rather, as described at col. 1, lines 25-31, the frame is self-assembling with the various parts, including the ridge pole and the corner posts being joined together by a spring-loaded cable. This makes the frame a free-standing tension structure, not the tent fabric.

With respect to dependent claims 8, 9, 21, and 22, each of the ends of the corner posts in Leibel '410 terminate in bottom supports at ground level. Therefore, the Leibel '410 structure does not anticipate these claims, each of which recite either one end or neither end of a spar terminating substantially at ground.

With respect to dependent claim 12, Leibel '410 clearly shows the tent fabric suspended beneath the ridge pole 37 and corner posts 11, 13, 15, 17, whereas the claim clearly recites the membrane is "over" the pole and spars.

The Examiner also rejected claim 26 as being obvious under 35 U.S.C. §103(a) in view of Eastaugh '945. For the same reasons explained above, Eastaugh '945 is not analogous prior art with respect to Claim 26, and the rejection should be withdrawn for that reason alone.

Additionally, Eastaugh '945 does not teach to use one or more spares to "increase stability of the pole under tension," as stated by the Examiner. Eastaugh '945 teaches to use a cross-rod with flag material hanging from it to rotate freely on a substantially upright rod to indicate wind direction. This has nothing to do with stability, nor is stability of the upright rod disclosed as a consideration in Eastaugh.

Most importantly, claim 26 depends from claim 25, which has been amended as explained above. Since Eastaugh '945 does not disclose or suggest a frame structure in which

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both ends of a flexible elongated pole terminate substantially at ground, as recited in amended claim 25, the §103(a) rejection with respect to claim 26 is overcome as well.

Finally, the Examiner rejected claim 29 as obvious pursuant to 35 U.S.C. §103(a) over Eastaugh '945 in combination with Dudouyt '287. The examiner states that while Eastaugh does not disclose a guy wire, Dudouyt does. Neither Eastaugh nor Dudouyt discloses or suggests a frame for a flexible shelter structure, or a flexible shelter structure including such a frame. Eastaugh discloses a wind-direction indicator. Dudouyt discloses a wind sail. Neither reference is analogous prior art. Persons skilled in the art would not be led to look to either reference alone or in combination for solutions to the problems addressed by the claimed invention. The rejection should be withdrawn for that reason alone.

Additionally, the Examiner refers to the component referenced as "5" in Dudouyt as being the "guy wire" recited in the claim. In fact, as shown in Fig. 1 and described at col. 2, lines 59-62, component 5 is a "control halyard" used to steer the sail vehicle described in Dudouyt. It is not connected between a spar and does not terminate substantially at ground. It is designed to be held by the operator of the sail vehicle and used to change the direction of the sail. There would be no reason for someone skilled in the art to include a "control halyard" as described in Dudouyt with the wind-direction indicator of Eastaugh to come up with the flexible shelter frame and structure claimed in the present application, except with knowledge of the claimed structure provided by the application, and in an attempt to reconstruct it from miscellaneous components of the prior art. Such hindsight reconstruction is of course improper. With the amendment of claim 1, from which claim 29 depends, and further for the reasons above, the §103(a) rejection of claim 29 is overcome and should be withdrawn.

CONCLUSION

Applicant respectfully submits that for the reasons given herein none of the cited references, either alone or in combination, discloses or suggests the unique combination of elements recited in the pending claims as presently constituted. Among other things, none of the references discloses or suggests either a frame for a shelter structure, or a flexible shelter

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structure employing such a frame, in which a main pole of the frame has two ends that terminate substantially at ground, and in which two or more spars with free ends are connected to the pole.

With the amendments to resolve the Examiner's §112 issues, applicant respectfully submits the pending claims recite patentable subject matter and are in proper form for allowance. Applicant therefore urges action to that end.

If the Examiner believes a further telephone discussion would expedite conclusion of the prosecution, the Examiner is invited to contact the undersigned attorney for applicant at the Examiner's convenience.

Respectfully submitted,



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